

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs November 14, 2006

**EDWARD DUELLEY v. HOWARD CARLTON, WARDEN and  
STATE OF TENNESSEE**

**Appeal from the Criminal Court for Johnson County  
No. 4798     Lynn W. Brown, Judge**

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**No. E2006-00848-CCA-R3-HC - Filed January 22, 2007**

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In October of 1987, the Petitioner, Edward Duelley, was convicted of armed robbery and assault with the intent to commit robbery. The Petitioner received an effective sentence of thirty-eight years in the Department of Correction. On January 6, 2006, the Petitioner filed a pro se petition for writ of habeas corpus, which the trial court summarily dismissed. On appeal, the Petitioner contends that the trial court erred in dismissing his petition. We affirm the trial court's summary dismissal of the petition.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

DAVID H. WELLES, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and NORMA MCGEE OGLE, JJ., joined.

Edward Duelley, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Blind Akrawi, Assistant Attorney General; and Joe Crumley, District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**Background**

Although the record does not contain the factual basis of the Petitioner's convictions, this case apparently arises from an armed bank robbery in Knox County, Tennessee. Following a bench trial in the Knox County Criminal Court, the Petitioner was convicted of armed robbery and assault with the intent to commit robbery. The Petitioner was sentenced to concurrent terms of thirty-eight years for the armed robbery and twenty-one years for the assault. His sentences were ordered to be served consecutively to his sentences on three cases in Spartanburg County, South Carolina, and to

be served concurrently with a sentence imposed by the United States District Court for the Eastern District of Tennessee.

It does not appear that the Petitioner pursued either a direct appeal or sought post-conviction relief. The Petitioner filed a petition for writ of habeas corpus on January 6, 2006 in the Johnson County Criminal Court. The Petitioner attached to his petition what appears to be a certified copy of the minutes of the trial court reflecting his convictions and sentences. The habeas corpus court summarily denied the petition, stating that “[n]othing in [the Petitioner’s] motion establishes grounds for relief by habeas corpus.” This timely appeal followed.

### **Analysis**

The Petitioner generally argues on appeal that he is entitled to habeas corpus relief because his sentence is illegal and void. His precise argument is unclear. The Tennessee Constitution provides for “the privilege of the writ of Habeas Corpus . . . .” Tenn. Const. art. 1, § 15. The applicable procedures for seeking the writ are codified in Tennessee Code Annotated sections 29-21-101 through 29-21-130. However, the grounds upon which our law provides relief are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). Habeas corpus relief is available only when it appears on the face of the judgment or the record that the trial court was without jurisdiction to convict or sentence the defendant or that the sentence of imprisonment has otherwise expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn.1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn.1992).

Unlike a post-conviction petition, the purpose of a habeas corpus petition is to contest a void, not merely voidable, judgment. State ex rel. Newsome v. Henderson, 424 S.W.2d 186, 189 (Tenn. 1968). A petitioner cannot collaterally attack a facially valid conviction in a habeas corpus proceeding. Potts, 833 S.W.2d at 62; State ex rel. Holbrook v. Bomar, 364 S.W.2d 887, 888 (Tenn. 1963). It is permissible for a trial court to summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. See Hickman v. State, 153 S.W.3d 16, 20 (Tenn. 2004); see also Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994).

The State first argues that the trial court properly denied the petition for writ of habeas corpus because the Defendant did not comply with the formal statutory requirements mandated by Tennessee Code Annotated section 29-21-107(b)(2)-(4). The applicable provisions are as follows:

(b) The petition shall state;

. . . .

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal

process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and

(4) That it is first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

Tenn. Code Ann. § 29-21-107(b)(2)-(4). Our supreme court has repeatedly concluded that a petition for the writ of habeas corpus may be denied for failure to stringently comply with the mandates of the statute. See Hickman v. State, 153 S.W.3d 16, 21 (Tenn. 2004); see also State ex rel. Goss v. Heer, 413 S.W.2d 688, 693 (Tenn. 1967); Johnson v. Russell, 404 S.W.2d 471, 473 (Tenn. 1966); State ex rel. Allen v. Johnson, 394 S.W.2d 652, 653 (Tenn. 1965); State ex rel. Wood v. Johnson, 393 S.W.2d 135, 136 (Tenn. 1965); Bomar, 381 S.W.2d at 291.

In the instant case, the Petitioner did not comply with the statute's formal requirements. The Petitioner did not attach a copy of the judgment form as mandated by Tennessee Code Annotated section 29-21-107(b)(2). The Petitioner did not allege that the "legality of the restraint has not already been adjudged upon a prior proceeding of the same character" as required by Tennessee Code Annotated section 29-21-107(b)(3). Finally, the Petitioner did not state whether this petition is his first application for the writ of habeas corpus as required by Tennessee Code Annotated section 29-21-107(b)(4). The burden rests on the Petitioner to meet these requirements and to establish that the judgment is void or the sentence has expired. Bomar, 381 S.W.2d at 291-92. For these reasons alone, the trial court may properly dismiss the petition for writ of habeas corpus for failure to comply with the petition requirements. See Hickman, 153 S.W.3d at 21.

In addition to the procedural defects in the petition, the Petitioner did not set forth a colorable claim of habeas corpus relief even if this Court were able to consider the petition on its merits. Within the limited scope of habeas corpus review, relief is proper only if the trial court had no jurisdiction to sentence the Petitioner or the full term of imprisonment has expired. See Hickman, 153 S.W.3d at 20. In this case, there is nothing in the record to suggest that the Knox County Criminal Court did not have jurisdiction to sentence the Petitioner for the bank robbery and the assault. See Tenn. Code Ann. § 40-1-107 to -108; Tenn. R. Crim. P. 18. Furthermore, based upon the documents that the Petitioner has submitted, it appears that he received an effective sentence of thirty-eight years on October 22, 1987. Because thirty-eight years have not elapsed since the

Petitioner was sentenced, he cannot succeed on a claim that his sentence has expired.<sup>1</sup> Therefore, the trial court properly dismissed the petition for writ of habeas corpus in this case.

### **Conclusion**

Based upon the foregoing reasoning and authorities, we affirm the judgment of the trial court.

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DAVID H. WELLES, JUDGE

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<sup>1</sup>The Petitioner's claim that his sentence has expired appears to be based, at least in part, on the calculation of his "jail credits." It appears that his argument relates also to his federal sentence and his South Carolina sentences. In any event, we see no basis to support an argument that his thirty-eight-year sentence has expired.